

Message Text

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ACTION L-03

INFO OCT-01 EUR-12 ISO-00 JUSE-00 CA-01 SS-15 NSCE-00
SP-02 H-01 SCS-06 CIAE-00 INR-10 NSAE-00 HA-05
INRE-00 SSO-00 /056 W
-----003494 291313Z /43

O R 291235Z AUG 78
FM AMEMBASSY ANKARA
TO SECSTATE WASHDC IMMEDIATE 3148
INFO AMCONSUL ISTANBUL
AMCONSUL ADANA
AMCONSUL IZMIR

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DEPARTMENT FOR MICHEL: JUSTICE FOR KEENEY

E.O. 11652 N/A
TAGS: CARR, TU
SUBJ: PRISONER TRANSFER TREATY: STATUS REPORT

REF: (A) STATE 217785; (B) ANKARA 6152

1. DELEGATION APPRECIATES DISPATCH WITH WHICH DEPARTMENT FURNISHED
COMMENTS IN REFERENCE A. BOTH NEGOTIATING SESSIONS ON AUGUST 28
DEALT WITH ISSUES ADDRESSED IN REFTELS.

2. THREE HOUR MORNING SESSION DEALT EXCLUSIVELY WITH VERIFICATION
OF CONSENT ISSUE. US DELEGATION SOUGHT TURKISH ACCEPTANCE OF
FORMULA IN PARA 2 REFTEL A, AND MYRIAD VARIATIONS OF THAT FORMULA.
EVEN MENTION IN TREATY OF VERIFICATION AS CONSULAR FUNCTION IN
TERMS OF ARTICLE 5(C) OF VIENNA CONVENTION ON CONSULAR RELATIONS
REJECTED BY OBDURATE TURKS. DURING BREAK CHAIRMAN EXPLORED FORMULA
THAT WOULD AVOID WORD "VERIFICATION" AND MAKE OTHER OPTICAL
IMPROVEMENTS. KUSTALOGLU REJECTED ANY REFERENCE TO CONSUL IN
TREATY. HE ADDED THAT TURKEY WOULD NOT OBJECT TO CONSUL
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CARRYING OUT VERIFICATION FUNCTION OR TO THE SENDING OF
EXPERTS TO ASSIST HIM WHEN REQUIRED BY THE FACTS OF A PARTICULAR
CASE. THIS THEY VIEWED AS NORMAL CONSULAR FUNCTION. BUT ANY
REFERENCE TO MATTER IN TREATY OR EXCHANGE OF LETTERS RELATED
THERE TO WOULD IN THE FOREIGN MINISTRY'S VIEW IMPERIL RATIFICATION
OF THE TREATY.

3. COMMENT. EMBASSY AND DELEGATION BELIEVE TURKS WILL NOT REPEAT NOT CHANGE THEIR POSITION ON INCLUSION OF A VERIFICATION PROVISION. EXERCISE OF FUNCTIONS BY OUR CONSULS HERE HAS BEEN FREELY PERMITTED BY TURKS, UNDER VIENNA CONVENTION ON CONSULAR RELATIONS, TO WHICH WE ARE BOTH PARTIES. IN VIEW OF REPEATED ASSERTIONS BY TURKS DURING NEGOTIATIONS THAT THEY UNDERSTAND 18 U.S.C. 4108 AND HAVE NO OBJECTION TO CONSULS PERFORMING FUNCTION DESCRIBED THEREIN, EMBASSY AND DELEGATION BELIEVE THAT TURKEY WOULD PERMIT A U.S. CONSUL TO PERFORM THE VERIFICATION FUNCTION NOTWITHSTANDING ABSENCE OF SPECIFIC PROVISION IN TREATY. INDEED, GIVEN POSITION TAKEN, TURKEY COULD NOT IN GOOD FAITH DECLINE.

4. AFTERNOON SESSION DEVOTED TO SUBSTITUTED SENTENCES PROBLEM. TURKISH DELEGATION APPEARED SHARPLY DIVIDED ON ISSUE. U.S. SIDE TABLED A PROVISION TAILORED TO MEETING PRINCIPAL DIFFICULTY RESULTING FROM OUR INABILITY TO DETERMINE PRIOR TO TRANSFER OF PRISONER PERIOD FOR WHICH SANCTION WILL BE ENFORCED. CHAIRMAN HAS SUGGESTED WE DEVOTE TUESDAY'S SESSION TO FURTHER EXPLORATION OF U.S. PROPOSAL. HE NOTED, IN PASSING, THAT IN VIEW OF UPCOMING THREE DAY TURKISH HOLIDAY BEGINNING LABOR DAY, WE SHOULD TRY TO CONCLUDE NEGOTIATIONS BY SEPTEMBER 1. U.S. DELEGATION WILL CONTINUE TO DISCUSS SUBSTITUTED SENTENCE ISSUE UNTIL IT IS RESOLVED OR IT APPEARS THAT AGREEMENT CAN NOT BE REACHED WITHIN THIS TIMEFRAME.

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5. IN DISCUSSION OF ENFORCEMENT OF SANCTIONS PROBLEM TURKS POINTED OUT THAT THEY CONSIDER THAT PARTIES SHOULD, AS IN EUROPEAN CONVENTION, ENFORCE SANCTIONS BOTH AGAINST NATIONALS TRANSFERRED UNDER TREATY AND NATIONALS WHO AFTER THEY HAD BEEN SENTENCED AT A TRIAL IN WHICH THEY HAD PARTICIPATED HAD FLED TO THEIR HOME COUNTRY WITHOUT SERVING THAT SENTENCE. ALTHOUGH EXISTING U.S. BILATERALS DO NOT DEAL WITH MATTER ATTORNEY GENERAL WOULD APPEAR TO HAVE AUTHORITY TO DO THIS IF TREATY COVERED ENFORCEMENT OF SANCTIONS WHETHER OR NOT PRISONER TRANSFERRED TO REQUESTED STATE UNDER TREATY. WE BELIEVE EXTENDED SCOPE OF TREATY WOULD BE CONSISTENT WITH PRINCIPLES OF EXTRADITION TREATIES AND WOULD BE PREFERABLE TO PROCEEDING TO EXTRADITION IN CASES WHERE THAT IS POSSIBLE.

6. IN DISCUSSION ON SCHEDULING WE ASKED KUSTALOGLU WHAT ACTION TURKEY WOULD WISH TO TAKE ON THE DRAFTS ON EXTRADITION AND MUTUAL ASSISTANCE IN CRIMINAL MATTERS THAT WE HAVE TABLED. (EMBASSY WILL IN ACCORDANCE WITH TURKISH PREFERENCE TABLE CONSULAR CONVENTION DRAFT AT LATER STAGE.) KUSTALOGLU STATED THAT THE TWO TABLED DRAFTS HAD BEEN SENT TO THE INTERESTED MINISTRIES FOR STUDY, THAT COMMITTEES WOULD BE ESTABLISHED TO REVIEW THE PROPOSALS, AND THAT THE TURKS WOULD BE IN TOUCH

WITH US ABOUT SCHEDULING NEGOTIATIONS WHEN THESE STEPS HAD
BEEN CONCLUDED. COMMENT. IT NOW APPEARS THAT IF PRESENT
NEGOTIATIONS SHOULD LEAD TO CONCLUSION OF TREATY TURKS
WOULD CONTEMPLATE SENDING IT TO PARLIAMENT AS A TECHNICAL
AGREEMENT STANDING ALONE RATHER THAN AS PART OF PACKAGE.
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Message Attributes

Automatic Decaptioning: X
Capture Date: 01 jan 1994
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: n/a
Control Number: n/a
Copy: SINGLE
Draft Date: 29 aug 1978
Decaption Date: 01 jan 1960
Decaption Note:
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 20 Mar 2014
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1978ANKARA06222
Document Source: CORE
Document Unique ID: 00
Drafter: n/a
Enclosure: n/a
Executive Order: N/A
Errors: N/A
Expiration:
Film Number: D780352-0673
Format: TEL
From: ANKARA
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1978/newtext/t19780811/aaaaaimm.tel
Line Count: 122
Litigation Code IDs:
Litigation Codes:
Litigation History:
Locator: TEXT ON-LINE, ON MICROFILM
Message ID: eba31759-c288-dd11-92da-001cc4696bcc
Office: ACTION L
Original Classification: LIMITED OFFICIAL USE
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 3
Previous Channel Indicators: n/a
Previous Classification: LIMITED OFFICIAL USE
Previous Handling Restrictions: n/a
Reference: 78 STATE 217785, 78 ANKARA 6152
Retention: 0
Review Action: RELEASED, APPROVED
Review Content Flags:
Review Date: 13 jun 2005
Review Event:
Review Exemptions: n/a
Review Media Identifier:
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
SAS ID: 1567941
Secure: OPEN
Status: NATIVE
Subject: PRISONER TRANSFER TREATY: STATUS REPORT
TAGS: CARR, TU
To: STATE
Type: TE
vdkgvwkey: odb://SAS/SAS.dbo.SAS_Docs/eba31759-c288-dd11-92da-001cc4696bcc
Review Markings:
Sheryl P. Walter
Declassified/Released
US Department of State
EO Systematic Review
20 Mar 2014
Markings: Sheryl P. Walter Declassified/Released US Department of State EO Systematic Review 20 Mar 2014